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OCT 21 2009

OFFICE OF PETITIONS

In re Application of	:	
John Browne, et al.	:	
Application No. 09/219,935	:	ON PETITION
Filed: December 23, 1998	:	
Attorney Docket No. BB1036USCNT	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 8, 2009, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed September 3, 2008, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on November 4, 2008. See MPEP 1215.04.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1).

An Appeal Brief was not filed in response to the Notice of Appeal filed September 3, 2008.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See *In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1,730 extension of time fee submitted with the petition on April 8, 2009 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.


Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-2991.


Terri Johnson
Petitions Examiner
Office of Petitions

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) FY 2009 (VIA EFS-WEB) <i>(Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).)</i>		Docket Number (Optional) BB1036USCNT	
Application Number 09/219935		Filed December 23, 1998	
Confirmation No. 4143			
For FATTY ACID DESATURASE GENES FROM PLANTS			
Art Unit 1638		Examiner Elizabeth F. McElwain	
This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application. The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):			
	<u>Fee</u>	<u>Small Entity Fee</u>	
<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$130	\$65	\$ _____
<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$490	\$245	\$ _____
<input type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$1110	\$555	\$ _____
<input checked="" type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1730	\$865	\$ 1,730.00
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2350	\$1175	\$ _____
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27.			
<input type="checkbox"/> A check in the amount of the fee is enclosed.			
<input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.			
<input type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account.			
<input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number <u>04-1928</u> .			
WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.			
I am the <input type="checkbox"/> applicant/inventor.			
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96).			
<input checked="" type="checkbox"/> attorney or agent of record. Registration Number <u>30,971</u>			
<input type="checkbox"/> attorney or agent under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____			
<u>/Lynne M. Christenbury/</u> Signature		<u>April 8, 2009</u> Date	
<u>LYNNE M. CHRISTENBURY</u> Typed or printed name		<u>(302) 992-5481</u> Telephone Number	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input type="checkbox"/> Total of _____ forms are submitted.			

Adjustment date: 10/28/2009 CKH/OK
 04/09/2009 INTFSU 00001594 041928 09219935
 02 FC:1254 1730.00 CR

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND												
1 Date of Request: <u>10/19/09</u>		2 Serial/Patent # <u>09/219,935</u>										
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT								
	Filing			\$								
	Amendment			\$								
<input checked="" type="checkbox"/>	Extension of Time		04/08/09	\$ 1,730.00								
	Notice of Appeal/Appeal			\$								
	Petition			\$								
	Issue			\$								
	Cert of Correction/Terminal Disc.			\$								
	Maintenance			\$								
	Assignment			\$								
	Other			\$								
			7 TOTAL AMOUNT OF REFUND		\$ 1,730.00							
			8 TO BE REFUNDED BY:									
10 REASON:			Treasury Check									
	Overpayment	<input checked="" type="checkbox"/> Credit Deposit A/C #:										
	Duplicate Payment	9 <table border="1" style="display: inline-table; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 20px;">0</td> <td style="width: 20px;">4</td> <td style="width: 20px;">--</td> <td style="width: 20px;">1</td> <td style="width: 20px;">9</td> <td style="width: 20px;">2</td> <td style="width: 20px;">8</td> </tr> </table>				0	4	--	1	9	2	8
0	4	--	1	9	2	8						
<input checked="" type="checkbox"/>	No Fee Due (Explanation):											
Extension of time is unnecessary.												
11 REFUND REQUESTED BY:												
TYPED/PRINTED NAME: <u>Terri Johnson</u>		TITLE: <u>Paralegal Specialist</u>										
SIGNATURE: <u><i>Terri Johnson</i></u>		PHONE: <u>(571) 272-2991</u>										
OFFICE: <u>Office of Petitions</u>												
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APPROVED: <u><i>CKH</i></u>		DATE: <u>10/20/09</u>										

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to: